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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1240th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 July 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Hungary (CCPR/C/64/Add.7; HRI/CORE/1/Add.11; M/CCPR/93/18)

1. Mr. Bárd, Mr. Höltzl, Mr. Lontai, Mr. Szapora and Mrs. Hevesi (Hungary) took places at the Committee table.

2. The CHAIRMAN welcomed the Hungarian delegation and said that Hungary had undergone very considerable changes since it had submitted its second periodic report. The period which had just elapsed had been marked by numerous events, but undoubtedly by numerous difficulties too. He was sure that the dialogue with members of the Committee would prove fruitful. He would point out that it was the Committee's privilege to include among its members, in the person of Mr. Fodor, a Hungarian citizen whose competence and experience were a major asset.

3. Mr. BARD (Hungary) said that Hungary had indeed experienced major upheavals. Some of the information in the report was no longer up to date and he proposed in his introduction in particular to give an overview of the situation regarding Hungarian legislation.

4. To exercise the right to vote and to stand for election, it was necessary to be of the requisite age, to be a Hungarian citizen and to reside permanently in Hungary, and, in the case of the right to vote, to be in Hungary on the day of the elections. In accordance with a Government proposal to amend the Constitution and the law on the election of members of Parliament, only the age and citizenship requirements would be kept, which would mean that Hungarian citizens living abroad could vote in electoral districts to be constituted outside the country. It was planned to set up at least three of those districts in each continent. Hungarian citizens living abroad would also be eligible, subject to a statement in writing that, if elected, they would reside in Hungary. The proposed changes had caused great controversy and a consensus must be found, since they would involve amendments to the Constitution.

5. Under article 2, paragraph 3, of the Covenant, the States parties undertook to guarantee an adequate remedy for the violation of rights recognized in the Covenant. The Constitutional Court had declared Hungarian legislation in that respect unconstitutional, since it only provided for the possibility of appealing to the courts in a limited number of cases. It was planned to guarantee in the near future the possibility of unrestricted recourse to appeal to the courts against all administrative decisions. Moreover, the institution of the Ombudsman for Civil Rights would certainly have a predominant role in remedying wrong decisions by administrative authorities. His duties had already been decreed by an Act adopted by Parliament on 1 June 1993. Parliament had, however, already instituted a system for judicial monitoring of nearly all administrative decisions by amending the Act on the organization of the courts and the Act on civil procedures. Examples of exceptions were cases in which the measure being

challenged was provisional or when the administrative authority summoned a conscript for a medical examination or for a hearing to decide on his application to perform alternative service.

6. The Constitutional Court was the cornerstone of the rule of law in Hungary and concise in safeguarding the rights embodied in the Covenant. It verified whatever domestic laws were in conformity with the international obligations contracted by Hungary, and did so at the request of private persons as well as institutions; it considered cases of possible conflict of law and took the necessary steps to resolve them. As things stood, the courts could submit an application to the Constitutional Court exclusively in cases where they observed a conflict between the Constitution and the specific provision of the law they applied. That procedure nevertheless ensured effective implementation of the provisions of the Covenant, most of which were, in fact, included in the Hungarian Constitution. The bill had been submitted to amend the organizational law on the Constitutional Court and allow it to be seized if the lower courts considered that a provision of domestic law was incompatible with Hungary's international obligations. That would mark significant progress. The institution of the power of protest of the Chief Public Prosecutor or the President of the Supreme Court, referred to in the report (CCPR/C/64/Add.7, para. 18), had been declared unconstitutional in 1992, basically because it could create legal uncertainty and was therefore incompatible with the rule of law; it had been replaced in 1993 by the "review procedure", which could be initiated against the final decisions of courts in the event of alleged violations of specific substantive or procedural provisions. The main difference between the new procedure and the previous one (laying a protest on legal grounds) was that it was initiated by the parties concerned and not by the Chief Public Prosecutor or by the President of the Supreme Court. However, it was self-evident that in criminal proceedings the State was included among the parties concerned.

7. As to article 6 of the Covenant, the issue of abortion had been the subject of sharp controversy, as outlined in the report (paras. 39-43). Since the report had been drafted, Parliament had enacted a new law which provided for counselling and information services and assistance to pregnant women and also established stricter conditions, whereby abortion was permitted only in cases where the life and health of the mother or the foetus were in danger.

8. With reference to article 7 of the Covenant, particular mention should be made of the adoption of a law amending the Execution of Sentences Act, which came into force on 15 April 1993 and considerably broadened the rights of persons in custody, extending the role of the visiting magistrate and doing away with certain excessive and inhumane disciplinary sanctions.

9. With reference to article 8 of the Covenant, special mention should be made of the entry into force on 15 May 1993 of a text amending the sentences section of the Penal Code and abolishing both forms of rehabilitation labour (ordinary and aggravated).

10. Parliament had had before it a bill to strengthen the rights guaranteed in article 9 of the Covenant by laying down that any person arrested on suspicion of having committed a criminal offence should be brought before a court within 72 hours. Similarly, another bill would be submitted to

Parliament in autumn 1993, guaranteeing that no custodial measure could be enforced without a prior judicial decision, for example, in the case of the mandatory arrest of military personnel as a disciplinary sanction or the administrative internment of an alien in the process of expulsion. The bill also amended the provisions governing compensation for unlawful detention and the revision of all provisions which did not conform to the principle of presumption of innocence.

11. The CHAIRMAN asked the Hungarian delegation to respond to the questions in the list of issues to be taken up in connection with the consideration of Hungary's third periodic report, beginning with section I, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination; equality of the sexes; protection of the family and of the children; and rights of persons belonging to minorities (articles 2, 3, 4, 23, 24, 26 and 27)

(a) What is the position of the Covenant in the Hungarian legal system? Please clarify whether individuals can invoke the provisions of the Covenant directly before the courts and other State bodies.

(b) To what extent have the provisions of the Covenant been taken into account in the formulation of the legal instruments mentioned in paragraph 7 of the report?

(c) What are the role, mandate and powers of the Constitutional Court? Does verification of the constitutionality of laws include their comparison with international treaties or only with the National Constitution?

(d) Please clarify the meaning of article 70/k of the Constitution and how it has been applied in practice (see para. 77 of the report).

(e) Has Hungarian legislation already established the office of the Ombudsman for Civil Rights? What powers and functions of the Ombudsman are envisaged? (See para. 20 of the report.)

(f) What measures have been taken to disseminate information on the rights recognized in the Covenant and on the First Optional Protocol. To what extent has the public been made aware of the examination of this report by the Human Rights Committee?

(g) What are the current status and content of the Bill relating to rules applicable during a state of emergency? (See para. 35 of the report.) What are the main differences compared with the system previously in force?

(h) Please provide statistical information regarding the size of any ethnic, religious and linguistic minorities living in Hungary and describe their status in law and practice.

(i) What are the current status and content of the draft law on the rights of national and ethnic minorities mentioned in paragraph 137 of the report?"

12. Mr. BARD (Hungary), replying to the question contained in item (a), said that for the time being an international agreement had to be "transformed" into a domestic law by means of an act of Parliament or, in the case of a technical agreement, a government decree. The Covenant had been promulgated by a decree law, issued by the former Presidential Council, which no longer existed; meanwhile, it had become a domestic law and its provisions could be directly applied in any type of procedure. In the event of conflict between an international instrument and domestic law, the solution depended on the position in the hierarchy of laws of the act, in other words, the method, by which the law had been promulgated. If the domestic law was of equal rank or lower, the Constitutional Court simply annulled it. If, however, the domestic law was higher-ranking, the Constitutional Court could only call upon the body responsible for concluding the international agreement to settle the conflict. If, the planned amendment of the Constitution resulted in a system whereby international treaties became part of the legal system simply upon ratification, then the Covenant would automatically have priority over domestic laws.

13. As to item (b) of the list of issues, the wording of all the legal instruments mentioned in paragraph 7 of the periodic report (CCPR/C/64/Add.7) was very similar to that of the Covenant, and explicit reference was made in the preamble to several new laws to the provisions of the Covenant. That could be explained by the insistence on the part of the opposition at the time in demanding a broadening of the human rights recognized by the Constitution, and in requiring that they should be brought into line with the rights guaranteed by the Covenant.

14. With reference to item (c), the functions of the Constitutional Court were first of all normative in nature. The Court determined whether specific statutory provisions conformed to the Constitution and made a similar check on draft laws, an activity intended to ensure the supremacy of the Constitution. The Constitutional Court also had a preventive role and ensured that unconstitutional laws could not enter into force. Another function - under article 48 of the Act on the Constitutional Court - was to consider any constitutional complaint by anyone who alleged that his rights had been violated by the application of an unconstitutional provision, provided all available remedies had been exhausted. The use of such a new institution had not yet been regulated in detail and numerous questions had not yet been resolved. However, the Constitutional Court itself interpreted the possibility of submitting a constitutional complaint as a kind of remedy which empowered it to annul a judicial decision taken in an individual case. It was the remedy aspect which distinguished that procedure from the a posteriori monitoring procedure. With regard to the consequences of decisions by the Constitutional Court, special rules applied for convictions and sentences handed down by the criminal courts. If the Court declared that a provision of criminal law was unconstitutional and a final sentence of guilt had been handed down, the Court would order a review of the criminal procedure in cases where annulment of the criminal provision in question was likely to result in less severe punishment or in acquittal. Since the power of protest by the

Chief Public Prosecutor and the President of the Supreme Court had been declared unconstitutional (see para. 6 above), such matters were settled by retrial.

15. The Constitutional Court monitored the constitutional nature of a legislative act first by verifying that it was compatible with the obligations contracted under international treaties, in the light of article 7, paragraph 1, of the Constitution, which laid down that the legal system of the Republic of Hungary must respect the generally accepted rules of international law and ensured harmony between international obligations and domestic law.

16. The Constitutional Court also examined ex officio or, for example, at the request of Parliament, parliamentary commissions or members of Parliament, the President of the Republic, or a member of the Government, the compatibility of domestic legislation with international treaties. In his reply to the question concerning the status of the Covenant in the Hungarian legal system he had already outlined how a potential conflict was solved.

17. As for the question in item (d), article 70/k of the Constitution should be regarded as a kind of directive for the legislature. However, in the absence of details of the procedure to be followed in filing a remedy, it was only of relative value. It had none the less found specific application in the Constitutional Court's decision that the earlier provision, whereby a number of administrative decisions were open to appeal, was contrary to the Constitution. That decision had been followed by legislative action providing for a judicial review of the administrative decisions. Since Hungary had ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, its legislators faced an even harder task. According to article 6 of that Convention, everyone was entitled to a hearing by a tribunal, which would decide on debatable issues concerning his civil rights. In the Hungarian legal system, however, the courts were not yet empowered to hand down decisions in all areas.

18. As far as the questions raised in item (e) were concerned, according to Act LIX of 1993, the Ombudsman's task was to conduct or to order investigations into reported civil rights grievances and, when violations were proved, he was required to take general or individual measures. The Act contained detailed provisions concerning the election of the Ombudsman, the termination of his activities and the procedure to be followed in the case of alleged violations of fundamental constitutional or civil rights.

19. The Ombudsman must be a jurist of great ability, with an excellent reputation and wide experience of civil rights issues. Persons who in the four years preceding the date of the candidature had been members of Parliament, President of the Republic, members of the Government or of the Constitutional Court or who had been high-ranking government officials could not stand as candidates, nor could prosecutors, police or armed forces personnel or persons who had been employed by a political party. The Ombudsman was elected by Parliament, on the proposal of the President of the Republic. A two-thirds majority was required to elect an Ombudsman or to terminate his activities.

20. Anyone who considered he was a victim of civil rights violations as a result of a decision or a measure taken by the authorities could approach the Ombudsman once all available remedies were exhausted. The Ombudsman, could, however, also take steps on his own initiative. He had a number of powers similar to those of judges; any person summoned was required to appear before him, to make statements and to answer his questions. The Ombudsman did not have access to certain files and documents concerning national security, but any information he needed must be communicated to him by heads of military or national security bodies, which were required to assist him in performing his duties. When he needed to consult documents about police (criminal investigations) activities, the Ombudsman had to request permission from the Director-General of the police. In the event of a refusal, he could apply to the Minister of the Interior. If he reached the conclusion that constitutional rights had been violated, the Ombudsman then called upon the competent body to remedy the violation. If his application remained unanswered, or if he considered the measures adopted to be inadequate, he informed Parliament of the matter when he submitted his annual report and requested a parliamentary investigation.

21. In addition to investigations of individual complaints, the Ombudsman could request the Constitutional Court to confirm the compatibility of any piece of legislation with the Constitution or international treaties. He could also seize the Constitutional Court in the event of a constitutional complaint, and also raise questions concerning the interpretation of provisions of the Constitution.

22. As to the questions contained in item (f), like all international treaties and conventions to which Hungary was a party, the texts of the Covenant and the first Optional Protocol had been published in the Official Gazette of the Republic of Hungary, that being the sine qua non for their entry into force. They had been suitably publicized in the media, including radio and television. The Committee's decision concerning the complaint submitted by Mr. Csaba Párkányi under the Optional Protocol had also received wide coverage in the national press.

23. The Hungarian Centre for Human Rights had a major role in the dissemination of information on the rights set out in the Covenant and the first Optional Protocol. In particular, it handled the translation, publication and distribution of the relevant international documents, not only the legal instruments themselves but also publications by Hungarian and foreign specialists. In 1991 the Centre had launched a quarterly review and it also recorded Hungarian legal practice in respect of human rights and was involved in the preparation of curricula. The Covenant and the Optional Protocol, like all other international human rights instruments, were an integral part of the curriculum in law faculties. Human rights could also be found in the primary school curriculum. Information on human rights issues was to be more detailed and wide-ranging in the near future and would also be included in the secondary school curriculum.

24. The numerous activities of non-governmental organizations (publications, seminars, etc.) also made an important contribution to promoting awareness of human rights norms and standards. The Hungarian United Nations Association had issued 20 publications on the subject. The London-based organization,

the International Centre for the Legal Protection of Human Rights, had recently set up an office in Hungary and had held a seminar on the legal status of aliens in international law.

25. With regard to how the public was informed of the Committee's examination of Hungary's third periodic report, all the Committee's comments and recommendations would be sent to the appropriate parliamentary commissions, ministries and other bodies which had taken part in the preparation of the report (CCPR/C/64/Add.7), and they would be publicized in the media.

26. As to item (g), unfortunately, Hungarian legislation had a number of gaps in that regard. There were some constitutional provisions which listed rights that could be restricted in a state of emergency, but the National Defence Act contained only one chapter on steps to be taken in that type of situation. A new bill to amend the Act, mentioned in paragraph 35 of the report, set out provisions giving more details on the steps to be taken in a state of emergency. The amendment process was only in its initial stage, however, and matters were not moving ahead as fast as might be wished because Parliament was completely overburdened with work and had been forced to confine itself to adopting the laws which seemed to be most urgent.

27. Taking the questions contained in items (h) and (i) together, he said that, according to the most recent statistics, the largest minority consisted of Gypsies, of whom there were 600,000 in Hungarian territory. Next came the German (220,000), Slovak (110,000), Croat (80 to 90,000), Romanian (25,000) and Serbian (5,000) minorities. There were also Bulgarian, Polish, Greek, Armenian, Ruthenian and Ukrainian minorities. Generally speaking, 50 to 60 per cent of the children in those minorities attended schools for minorities.

28. On 7 July 1993 Parliament had adopted the Rights of National and Ethnic Minorities Act, which stated in article 3 that acts of discrimination against minorities constituted a violation of the Constitution and that any injury to or any discrimination against an individual on the grounds of his belonging to a minority was punishable by law.

29. Under the Act, all ethnic groups established in Hungary for at least a century were to be considered as national and ethnic minorities whose members were Hungarian citizens, differing from the rest of the population in language, culture and traditions, and whose sense of unity was concerned with preserving tradition and expressing and protecting the interests of their historical communities. At the present time, the minorities which met those criteria were the Bulgarians, Egyptians, Greeks, Croats, Poles, Germans, Armenians, Romanians, Ruthenians, Serbs, Slovaks, Slovenes and Ukrainians. If any minority other than those listed in the Act wish to prove that it met the requirements for being considered a minority under the Act, it could submit a popular initiative on the matter to Parliament. The initiative must come from not less than 1,000 Hungarian citizens who regarded themselves as part of that minority.

30. The Act drew a distinction between the individual rights and the collective rights of minorities. The former category included a person's right to declare individual membership of a minority and to express it,

the rights to a national or ethnic identity, equality of opportunity, the right of free choice of a first name and that of one's children, and so on. The collective rights included the rights to preserve, develop and transmit the minority's identity, historical traditions and language. The minorities also had the right to establish organizations and to be represented by autonomous authorities at the local and national levels.

31. With regard to the autonomous authorities for the minorities, the Act provided that local authorities in which more than half of the members had been elected from among the candidates of a national or ethnic minority could declare themselves to be the local autonomous authority of that minority. When 30 per cent of the members of local authorities were representatives of minorities, they could constitute politically separate groups within the local government. Decrees of local-autonomous authorities concerning a minority could be adopted only with the agreement of the majority of the group's representatives. A number of decisions concerning school principles, training and education also required their consent.

32. Children from a minority had the right to education in their own language in separate establishments. The Act also provided that the minority's history and traditions should be included in the school curriculum.

33. Again, under the Act specific conditions had to be created in education and training to eliminate the disadvantages experienced by the Gypsy population in those matters.

34. Generally speaking, it was incumbent on the State to arrange for the training of teachers to educate minorities in their own language. The Act also provided for the recognition of equivalences for degrees and diplomas issued by universities, colleges and other teaching establishments situated outside national territory at which persons belonging to a minority had studied.

35. Under another major provision of the Act, every individual had the right to use his own language in civil, administrative and criminal proceedings. The representatives of a minority could also use their own language in the National Assembly as well as within local autonomous authorities. The representatives could, as a group, also decide that the minutes of the proceedings and decisions should be kept both in Hungarian and in the minority language. The decrees of the authorities must also be issued in the minority language if the group representing the minority so requested. The names of built-up areas and streets and signs on public offices must appear in Hungarian and in a minority language if the representatives of the minority so requested.

36. The current Act on the election of members of Parliament contained no specific provision on the representation of minorities in Parliament. In 1992, the Government had submitted an amendment to the Act providing for adequate representation of the minorities, whereby Parliament should have 13 new members representing minorities on the national list. Each of those candidates need only obtain 3,000 votes, while in general a candidate required 30,000 votes to be elected. In addition, the 13 seats reserved for the minorities would not be affected by the rule that only political parties

which had obtained at least 4 per cent of the votes could be represented in Parliament. The national organizations representing the 13 minorities (see para. 29) could constitute a national list.

37. Lastly, with regard to the introduction of an Ombudsman for national and ethnic minority rights, Parliament had questioned the justification of the provisions of the Constitution applicable to that issue in considering the text of the Act on minority rights. Under a constitutional amendment of 1990, the authority of the National Assembly Commissioner of National and Ethnic Minority Rights ("Minority Ombudsman") was exercised through a body comprising a representative of each national and ethnic group appointed by the organizations of national and ethnic minorities and elected by the National Assembly. The question had arisen, however, as to whether that type of body could still operate successfully, and other solutions were being considered.

38. The CHAIRMAN thanked the Hungarian delegation.

39. Mr. DIMITRIJEVIC said he welcomed Mr. Bárd's statement and the very detailed replies to the questions contained in section I, enabling some gaps in the periodic report (CCPR/C/64/Add.7) to be filled. Like many of the reports submitted to the Committee, it could be said that it tended to be over-legalistic. Article 40, paragraph 2, of the Covenant provided that the reports of States parties should indicate the factors and difficulties, if any, affecting the implementation of the Covenant. That paragraph was of particular importance in the case of Hungary, as one of the countries which had experienced a period of transition from a totalitarian system to democracy. Unfortunately, in all the countries concerned, the transition had proved far more trying and difficult than had been foreseen when communism had collapsed, and States had found themselves faced with very serious dangers. In view of that situation, it would have been interesting to learn how Hungary had thrown off the shackles of the past and how it had avoided the risk of going from one extreme to the other. Unfortunately, the report was not very illuminating in that regard. Generally speaking, few reports by States parties referred to article 5 of the Covenant, the provisions of which applied specifically to persons who took issue, as indeed had been the case in Hungary, with the very notion of human rights, and endeavoured to sabotage the rights embodied in the Covenant. It was of crucial importance for the authorities of the countries concerned to take steps to avoid the resurgence of acts which one would like to believe belonged to the past; in saying that, he was thinking only not of the communist past of those countries but also of the fascist period. He was aware that fascist activities had taken place in Hungary and that the Constitutional Court had been seized of them. What exactly had they been, and how had the Constitutional Court settled those matters? What legal provisions existed to prevent the re-emergence of phenomena and activities which left such bad memories? In particular, did Hungarian legislation contain provisions condemning incitement to national hatred, and what had been done in statutory and legal terms to prevent the establishment or re-establishment of groups resolved to destroy the very notion of human rights and democracy? As a corollary to that question, what had become of the files of the secret services which had operated under the former regime. He would like the Hungarian delegation to provide some particulars in that regard. The matter was all the more serious because there were countries where the lack of vigilance in that area had led to great suffering.

40. Mr. Bárd had mentioned in his statement the issue of the eligibility for public office of Hungarian citizens living abroad. He would, however, like an explanation of the exact meaning of article 6, paragraph 3 of the Constitution, since there seemed to be a lack of consistency between the German and English versions which he had before him. In particular, was it possible, as in other countries, for Hungarian nationals living abroad to participate in their country's political life? Was that particular provision of the Constitution to be interpreted that way? Again, was there some privilege or special link to Hungary not only for Hungarian citizens living abroad but also for ethnic Hungarians living outside Hungary's borders? If so, he would like to know what kind of a link it was. Could such persons, for example, take part in elections in Hungary? He had in mind more particularly the large Hungarian minority in Romania, who were in a difficult situation in that respect.

41. The Hungarian delegation was not unaware that non-governmental organizations had complained of racist attitudes in some Hungarian towns and cities which were said to have led to acts of violence and discrimination against foreigners, particularly coloured persons. Had the authorities taken steps to remedy that situation? What guarantees was afforded by the law bearing in mind the fact that the Covenant made very little distinction between the rights of nationals and those of aliens.

42. With regard to minorities, the figures supplied by the delegation were different from those to be found in the core document on Hungary (HRI/CORE/1/Add.11). He would be grateful if the delegation could clarify that point. Lastly, he wished to know whether the Gypsies were still victims of discrimination as was also the case in some of Hungary's neighbours. If so, did the authorities intend to take steps to improve their position?

43. Mr. HERNDL said that he would like more details about the place of the Covenant in the Hungarian legal system, since it was an important matter in assessing the effective implementation of the Covenant in the State party. He referred in that regard to paragraph 362 of the core document (HRI/CORE/1/Add.11) and said that he would like to have details about the competence of the Constitutional Court with regard to the settlement of conflicts as between a ratified international instrument and the provisions of domestic law.

44. On the question of minorities, he would like to learn about the content of the bill on the rights of national and ethnic minorities, for the indications given in the third periodic report concerning the implementation of article 27 of the Covenant (paras. 131-139) were encouraging, yet it seemed from the country's recent history, mentioned in paragraph 5 of the core document, that Hungary's frontiers had nevertheless been drawn without national and ethnic groups being taken into account.

45. Mrs. CHANET thanked the Hungarian delegation for its oral statement, which usefully supplemented points inadequately covered in the report.

46. Following the transformations in Hungary after the change of political regime, had the administrative structures, and those of the judiciary in particular, undergone major changes too? Had the previously predominant role

of the Chief Public Prosecutor been maintained, had the status and powers of the judiciary been altered? With particular reference to paragraphs 19 and 20 of the third periodic report, she would like clarification of the links between the courts and the administrative tribunals and in particular the nature of the prosecutor's power of protest. Was that power used vis-à-vis courts or the administrative tribunals? Furthermore, what measures were envisaged to put an end to the restrictions in force on recourse to appeal to the courts against administrative decisions (para. 20)?

47. She shared Mr. Herndl's concerns about the ranking of the rules of domestic law. She too had noted that the rights set out in the Covenant had only been partly incorporated into the Constitution or incorporated in terms which were not those of the Covenant. Since the Constitution apparently ranked higher than did international instruments, it seemed that some fundamental rights were not guaranteed to the same extent under the Covenant and under the Constitution. The Hungarian delegation would doubtless be able to provide clarification in that regard.

48. As to the implementation of article 4 of the Covenant, according to paragraph 35 of the third periodic report a bill had been submitted to Parliament concerning a state of emergency. She would like to know if the bill had been drawn up in keeping with the provisions of article 4, paragraph 1, of the Covenant, the conditions in which a state of emergency could be decreed under the regulations about to come into force and whether those regulations would conform to the principles of non-discrimination embodied in the Covenant.

49. Mr. SADI wondered whether the reforms which had taken place in Hungary within the administration, the police and the old bureaucracy had been sufficiently far-reaching and whether the changes had been sufficiently prompt. He too wondered whether the former advocates of communism were subjected to any kind of discrimination in employment, particularly within the Government, on account of the ideology they had followed in the past. With regard to the place of the Covenant in internal law, he would like to know whether the Constitutional Court, whose role was apparently to resolve conflicts between domestic legislation and international instruments, could decide that a law was unconstitutional until it was amended and, in general, what the Court's terms of reference were. Had there been a specific instance in which the provisions of the Covenant had been invoked directly before the Courts? Lastly, Hungary's report could have contained more specific information, particularly on how the principle of equality between men and women was applied in practice, and it could have indicated whether, in addition to laws prohibiting discrimination, there were school curricula to combat inequalities in Hungarian society.

50. Mr. AGUILAR URBINA said he was not unaware that the rapid changes which had taken place in Hungary, while positive, had given rise to a number of difficulties in the specific implementation of the Covenant. For example, there was a contradiction between the provisions of the decree law referred to in paragraph 14 of the report, whereby persons considered as refugees benefited from the same treatment as Hungarian citizens, and the provisions

mentioned in paragraph 12, whereby refugees were accorded the same treatment as was accorded to aliens. What distinction was then made vis-à-vis refugees, depending on whether they were considered as aliens or as Hungarian citizens?

51. Like Mr. Sadi, he wished to know what had happened to former communists in Hungary and whether they were deprived of the right of access to administrative posts. He also asked for clarification of the role of the Chief Public Prosecutor, and like Mrs. Chanet, of the place of the Covenant in domestic law. Lastly, when the Constitutional Court pronounced a law unconstitutional, was it declared null and void as from the date of enactment or from the date of the ruling that it was unconstitutional?

52. Mr. EL SHAFEI said he recognized the calibre of the third periodic report, but would have liked it to contain more information on the factors and difficulties which had hindered the implementation of the Covenant since the submission of the second periodic report, following the radical changes which had taken place in Hungary. Even before the adoption of the reforms necessitated by the recent developments in the situation, the Hungarian Government had already been under the obligation to ensure that domestic legislation conformed to its commitments vis-à-vis the international instruments to which it had acceded. Actually, Hungary had acceded to the Covenant in 1976 and it was therefore bound by the provisions of article 2 of the Covenant. However, since the rule of law now prevailed, the legal situation had evolved, and it would be wise to consider to what extent the situation specifically conformed to the provisions of the Covenant.

53. Some questions arose regarding the powers of the Constitutional Court. When a lower court found that a case involved incompatibility between domestic law and one of Hungary's international obligations, and when that conflict of laws was taken to the Constitutional Court, was consideration of the case suspended pending amendment of the law or did the court rule with reference to the international treaty and not to domestic law? Had there been cases of that type in Hungary and had the Constitutional Court already had occasion to hand down a decision on a conflict between domestic law and an international instrument to which Hungary was party? In general, he would have liked a more detailed reply to item (a) of section I of the list of issues.

54. He would also like to have examples of how the new legislation on the rights of minorities, which extended those rights, was implemented in practice, and particularly whether the minorities were able to have their own institutions in the context of administrative self-government.

55. Mr. MAVROMMATIS said that the two documents comprising the report of Hungary (HRI/CORE/1/Add.11 and CCPR/C/64/Add.7) were satisfactory and, in view of the radical changes which the country had experienced recently, it was normal for the periodic report to focus mainly on the laws newly adopted, without being able to give details on their implementation in practice. The impression gained from reading the periodic report and the information communicated verbally by the Hungarian delegation was that Hungary intended to respect human rights and fundamental freedoms and that it was on the right road in that respect.

56. The first question concerned the Constitutional Court and its powers. What was meant by the power of rectification? What happened to cases judged and rights acquired under a lower-ranking law when that law had had to be amended? What was the position of the Hungarian legislator in that regard? His second question concerned the fate of persons who had occupied positions of authority under the previous regime and in particular persons who might have been guilty of violating civil and political rights. Had they been brought to justice? He would like to know how attitudes could be changed, since they did not change from one day to the next. Thirdly, in view of the wave of xenophobia in several European countries and information from governmental organizations referring to instances of xenophobic demonstrations in Hungary, he would like to know what the authorities were doing to prevent such situations.

57. Mr. PRADO VALLEJO said that the report submitted by Hungary was satisfactory because it was accurate and specific, two qualities which were important in giving an idea of a country's human rights situation. The information contributed verbally by the delegation had usefully supplemented the report. While the report described the progress achieved, it also admitted that other reforms were required (CCPR/C/64/Add.7, para. 28). He had for his part followed the development of the situation in Hungary since the initial report had been considered and was aware of all that had been done since then.

58. More specifically, it was gratifying to see that the human rights guaranteed by the Constitution in section XII were those set out in the Covenant. However, he wondered about article 3, paragraph 3, of the Constitution, whereby, to ensure the separation between political parties and public authorities, the law determined what official duties could not be carried out by members of political parties. Did that not constitute discrimination on the grounds of political opinion, and was it compatible with article 26 of the Covenant?

59. Secondly, paragraph 13 of the periodic report spoke of the rights of refugees, particularly the right not to be expelled or returned to their country. He would like to know how, in practice, a person could be expelled (paras. 73 and 75). Again, it appeared that in Hungary asylum-seekers were placed in centres where some of them had problems with the police and were even sometimes the victims of ill-treatment. Were the authorities aware of those facts, had they investigated the matter and did they monitor the refugee centres?

60. Thirdly, were the human rights set out in the Covenants taught in Hungary? If they were not disseminated, the Covenants were likely to become a dead letter.

61. Mr. WENNERGREN said that many things had changed in Hungary since the third periodic report had been prepared (November 1991) and even since the elaboration of the core document forming the first part of human rights reports (September 1992), which made the statement by the Hungarian delegation even more interesting. First of all, with regard to human rights education, was there a brochure or some other type of publication in Hungary that was readily available to the public and contained a clear presentation of human

rights, a subject in which technical language could be off-putting. He also wished to know what schools or universities did to spread knowledge of human rights.

62. He would also like to have details on the duties of the Constitutional Court, whose tasks were in particular to determine the constitutionality of legal provisions and engage in a preliminary consideration of certain draft laws. Paragraph 20 of the periodic report referred to legislation allowing unrestricted recourse to appeal to the courts against all administrative decisions and paragraph 79 mentioned the establishment of administrative courts as an indispensable guarantee for full right of access to the courts. What types of administrative courts were subject to the decisions of the administrative authorities appealed against - a supreme administrative jurisdiction like the Conseil d'Etat in France, a local administrative tribunal or an ordinary local court? Did the court which re-examined such a decision consider solely its legality, in which case it could only annul it, or could it replace it by another decision? There were different systems for reviewing administrative decisions and the delegation should clarify what the Hungarian procedure was.

63. Mrs. EVATT said that she welcomed the large amount of information contained in the third periodic report and the core document submitted by Hungary and noted that the third report resembled in some way an initial report, as a result of Hungary's recent history. The clarifications by the delegation had been extremely useful. She would like to know whether the Constitutional Court considered whether the laws were compatible not only with the Constitution and the provisions of the Covenant but also with the provisions of other human rights instruments such as the International Covenant on Economic, Social and Cultural Rights. In putting that question, she was thinking particularly of articles 7, 8 and 70 A of the Constitution.

64. As to the Ombudsman, it seemed that individuals could only refer to him after exhausting all other remedies. If that meant that an individual must bring the matter to court before approaching the Ombudsman, ordinary persons were placed under a financial burden; she would like to know whether legal aid existed for that purpose. The question was, in fact, whether a distinction was drawn between cases which should be submitted to the Ombudsman and cases that should be taken before legal or administrative bodies.

65. Regrettably, no information had been received from national or international non-governmental organizations on the subject of Hungary, since they were often very helpful to members of the Committee. She would hope that the Hungarian non-governmental organizations would communicate information to the Committee and that the information services would report on the dialogue between the State party and the Committee. With reference to human rights education, it was important to distribute the Covenant in Hungarian in schools, and to arrange for human rights instruction in the context of law studies and the training of police personnel and judges. Such education was particularly important in a country which was in the process of moving very rapidly towards a more democratic system.

66. On the question of the rights of religious minorities, she said that the Jews had suffered greatly under nazism in Hungary, and it seemed from some

reports, that they might be the target of displays of hatred yet again. She would like to know whether the laws adopted to protect the minorities against incitement to racial hatred had come into force and if they had had to be implemented to protect the Jews or any other ethnic group. In the context of the movement to give more self-government to the cultural minorities, she wondered whether women did not run a risk of finding themselves at a disadvantage to some extent in those minorities where their status was not equal with men. Were they appropriately represented in the bodies set up in the context of local self-government?

67. Again, with reference to the right to equal treatment, the Hungarian Constitution laid down special rules on behalf of women and young people in employment. She drew the attention of the Hungarian delegation to the risks of discrimination tied in with laws which instituted special protection for women, who were thus kept away from certain jobs. Laws of that type should be regularly reviewed and amended or even repealed if necessary. Retirement age was different for men and women, and she wished to know whether that difference had been abolished and whether other similar distinctions existed in Hungarian legislation. Women were very poorly represented in Parliament and accounted for only 7 per cent; had steps been taken to remedy that problem? It would be useful to know the percentage of women in the judiciary, among lawyers, and in the upper echelons of the civil service, and also whether Hungary had a ministry or department particularly concerned with promoting equal treatment for women.

68. Mr. FRANCIS said that the new provisions in the Constitution, particularly those in section XII, concerning fundamental human rights, and the establishment of new bodies to follow up human rights issues, showed that Hungary was in the process of bringing its legal system into line with the Covenant. Cooperation between the Human Rights Committee and the Hungarian authorities should therefore prove excellent.

69. Conflicts of law might emerge between domestic law and international agreements signed by Hungary, and they were settled by the Constitutional Court. He wished to know what criteria were applicable for handing down decisions on such conflicts and whether it was the Constitutional Court which determined the review procedure. What was the membership of the Court? Was it a subsidiary body of Parliament or a body set up by Parliament and operating independently?

70. With regard to the role of the Ombudsman, he would like to learn whether appeal could be made against a decision handed down by the Ombudsman and if an administrative body could request a review of a decision handed down by the Ombudsman against it. Lastly, the Hungarian delegation had mentioned the new provisions concerning bodies for the review of decisions to which the Chief Public Prosecutor could refer; was he to understand that there was a two-tier system of remedies?

71. The CHAIRMAN said the Hungarian delegation would answer members' questions at the next meeting.

The meeting rose at 1.05 p.m.